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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | AWA Docket No. 03-0023 |
| |) | |
| JOHN F. CUNEO, JR., an individual; |) | |
| THE HAWTHORN CORPORATION, |) | |
| an Illinois corporation; THOMAS M. |) | |
| THOMPSON, an individual; JAMES G. |) | |
| ZAJICEK, an individual; JOHN N. |) | |
| CAUDILL, III, an individual; JOHN N. |) | |
| CAUDILL, JR., an individual, and; |) | CONSENT DECISION AND . |
| WALKER BROTHER'S CIRCUS, INC., a |) | ORDER AS TO RESPONDENTS |
| Florida corporation, and DAVID A. |) | JOHN N. CAUDILL, III, |
| CREECH, an individual. |) | JOHN N. CAUDILL, JR. |
| |) | AND WALKER |
| Respondents. |) | BROTHER'S CIRCUS INC. |

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), by an amended complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.) (the "Regulations" and "Standards"). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit certain allegations in the amended complaint, as set forth below as findings of fact and conclusions of law, and admit that the Secretary has jurisdiction in this matter, waive oral hearing and further procedure, and consent and agree to the entry of this decision for the purpose of settling this proceeding.

The complainant agrees to the entry of this decision

Findings of Fact as to John N. Caudill, Jr. and Walker Brother's Circus Inc.

1. Respondent John N. Caudill, Jr., also known as "John Walker," is an individual whose mailing address is 410 Houle Avenue, Sarasota, Florida 34232, and at all times mentioned herein and was an owner and officer of respondent Walker Brother's Circus, Inc., and directed, managed and controlled its business activities.

2. Respondent Walker Brother's Circus, Inc., is a Florida corporation whose mailing address is 410 Houle Avenue, Sarasota, Florida 34232, and whose agent for service of process is Alice G. Caudill, 410 Houle Avenue, Sarasota, Florida 34232.

3. On or about May 1, 2001, through on or about October 30, 2001, respondents John N. Caudill, Jr., and Walker Brother's Circus, Inc., operated as exhibitors without being licensed.

Findings of Fact as to John N. Caudill, III

1. Respondent John N. Caudill, III, also known as "John John," is an individual whose mailing address is 410 Houle Avenue, Sarasota, Florida 34232, and at all times mentioned herein was an independent performing artist contracted with respondents John F. Cuneo, Jr., and The Hawthorn Corporation to train, care for, handle, transport, and conduct performances and exhibitions of elephants owned by respondent The Hawthorn Corporation.

2. On or about March 16, 2001, through on or about October 23, 2001, respondent John N. Caudill, III, operated as an exhibitor without being licensed.

3. On or about February 15, 2002, through March 4, 2002, respondent John N.

Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause trauma to the animal.

4. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause physical harm to the animal.

5. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause unnecessary discomfort to the animal.

6. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to have their attending veterinarian provide adequate veterinary care to their animals, and failed to obtain treatment for an Asian elephant (Delhi) who was suffering from severe chemical burns and bacterial infection.

Findings of Fact as to John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc.

1. On or about May 4, 2001, and May 25, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., allowed the public to feed Asian elephants food other than that provided by the facility.

2. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to establish and maintain programs of adequate veterinary care that included the availability of appropriate services, and allowed the toenails and footpads of four Asian elephants (Lota, Liz, Delhi, and Tess) to become overgrown.

3. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and

Walker Brother's Circus, Inc., failed to have their attending veterinarian provide adequate veterinary care to their animals, and failed to obtain treatment for an Asian elephant (Lota) who was excessively thin with a protruding spine and hip bones.

4. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and failed to observe, and inform the attending veterinarian, that an Asian elephant (Lota) was excessively thin.

5. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and failed to accurately observe four Asian elephants (Lota, Liz, Delhi, and Tess) that had overgrown toenails and footpads.

6. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed, during a public exhibition, to handle four Asian elephants (Lota, Liz, Delhi, and Tess) so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public.

7. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to have a responsible, knowledgeable, and readily-identifiable employee or attendant present during periods of public contact.

8. On October 2, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed, during a public exhibition, to handle three Asian elephants (Liz, Delhi, and Tess) so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public.

9. On October 2, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to have a responsible, knowledgeable, and readily identifiable employee or attendant present during periods of public contact.

10. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause trauma to the animal.

11. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause physical harm to the animal.

12. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause unnecessary discomfort to the animal.

13. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., exhibited an Asian elephant (Delhi) under conditions that were inconsistent with its good health and well-being.

Conclusions of Law as to John N. Caudill, Jr. and Walker Brother's Circus, Inc.

1. On or about May 1, 2001, through on or about October 30, 2001, respondents John N. Caudill, Jr., and Walker Brother's Circus, Inc., willfully violated the licensing regulations by operating as exhibitors as defined in the Act (7 U.S.C. § 2132) and the Regulations (9 C.F.R. § 1.1) without being licensed. 9 C.F.R. § 2.1(a)(1).

Conclusions of Law as to John N. Caudill, III

1. On or about March 16, 2001, through on or about October 23, 2001, respondent John N. Caudill, III, willfully violated the licensing regulations by operating as an exhibitor as defined in the Act (7 U.S.C. § 2132) and the Regulations (9 C.F.R. § 1.1) without being licensed. 9 C.F.R. § 2.1(a)(1).

2. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause trauma to the animal, in willful violation of section 2.131(a)(1). 9 C.F.R. § 2.131(a)(1).

3. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause physical harm to the animal, in willful violation of section 2.131(a)(1) of the Regulations. 9 C.F.R. § 2.131(a)(1).

4. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause unnecessary discomfort to the animal, in willful violation of section 2.131(a)(1) of

the Regulations. 9 C.F.R. § 2.131(a)(1).

5. On or about February 15, 2002, through March 4, 2002, respondent John N. Caudill, III, failed to have the attending veterinarian provide adequate veterinary care to animals, in willful violation of sections 2.40(a) and 2.40(b)(2) of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

Conclusions of Law as to John N. Caudill, III, John N. Caudill, Jr. and
Walker Brother's Circus, Inc.

1. On or about May 4, 2001, and May 25, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., Walker Brother's Circus, Inc., allowed the public to feed Asian elephants food other than that provided by the facility, in willful violation of section 2.131(c)(4) of the Regulations. 9 C.F.R. § 2.131(c)(4).

2. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to establish and maintain programs of adequate veterinary care that included the availability of appropriate services, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

3. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to have their attending veterinarian provide adequate veterinary care to their animals, in willful violation of sections 2.40(a) and 2.40(b)(2) of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

4. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to establish and maintain programs of adequate veterinary care that included daily observation of all animals to assess their health and well-being, in willful

violation of section 2.40(b)(3) of the Regulations. 9 C.F.R. § 2.40(b)(3).

5. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed, during a public exhibition, to handle four Asian elephants so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of section 2.131(b)(1) of the Regulations. 9 C.F.R. § 2.131(b)(1).

6. On June 27, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to have a responsible, knowledgeable, and readily-identifiable employee or attendant present during periods of public contact, in willful violation of section 2.131(c)(2) of the Regulations. 9 C.F.R. § 2.131(c)(2).

7. On October 2, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed, during a public exhibition, to handle three Asian elephants so there was minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of section 2.131(b)(1) of the Regulations. 9 C.F.R. § 2.131(b)(1).

8. On October 2, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to have a responsible, knowledgeable, and readily-identifiable employee or attendant present during periods of public contact, in willful violation of section 2.131(c)(2) of the Regulations. 9 C.F.R. § 2.131(c)(2).

9. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause trauma to the animal, in willful violation of section 2.131(a)(1). 9 C.F.R. § 2.131(a)(1).

10. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause physical harm to the animal, in willful violation of section 2.131(a)(1) of the Regulations. 9 C.F.R. § 2.131(a)(1).

11. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., failed to handle an Asian elephant (Delhi) as carefully as possible in a manner that did not cause unnecessary discomfort to the animal, in willful violation of section 2.131(a)(1) of the Regulations. 9 C.F.R. § 2.131(a)(1).

12. On October 5, 2001, respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother's Circus, Inc., exhibited an Asian elephant (Delhi) under conditions that were inconsistent with its good health and well-being, in willful violation of section 2.131(c)(1) of the Regulations. 9 C.F.R. § 2.131(c)(1).

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards issued thereunder.

2. Respondents John N. Caudill, Jr., Walker Brother's Circus, Inc., and John N.

Caudill, III, are jointly and severally assessed a civil penalty in the amount of \$25,000, of which \$20,000 shall be paid in accordance with the provisions set forth below in paragraph 3 of this order. The remaining \$5,000 shall be paid by a certified check or money order made payable to the Treasurer of United States and remitted to:

Bernadette R. Juarez
U.S. Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Mail Stop 1417
Washington, D.C. 20250-1417

Respondents' payment of the civil penalty shall be forwarded to, and received by, Ms. Juarez on or before March 30, 2004. Respondents shall indicate on the certified check or money order that payment is in reference to AWA Docket No. 03-0023.

3. Respondents shall pay the remaining \$20,000 in 3 installments: two installments of \$5,000 received on or before June 30, 2004 and September 30, 2004 and one installment of \$10,000 received on or before December 15, 2004. The payments shall be made by check or money order payable to the Treasurer of the United States and remitted to:

Bernadette R. Juarez
U.S. Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Mail Stop 1417
Washington, D.C. 20250-1417

4. If respondents fail to pay the civil penalty, in full, by certified checks or money orders made payable to the Treasurer of the United States as provided in paragraphs 2 and 3 of

this order, upon respondents' receipt of notice and accompanying supporting documentation from the complainant, Animal Welfare Act license number 58-C-0010 shall be revoked immediately and respondents shall be assessed the entire outstanding balance of the civil penalty, without further procedure. Respondents agree to a prospective waiver of any right to notice and opportunity for a hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with paragraphs 2 and 3, and the parties agree that respondents may seek further review or injunctive, declaratory or other appropriate relief pursuant to section 2146(c) of the Act (7 U.S.C. § 2146(c)), in the district court in the district where respondents reside or have their place of business.


5. If and when the suspension of respondent Walker Brothers Circus, Inc.'s Animal Welfare Act license (58-C-0010), pursuant to paragraph 3 of the order issued March 21, 1997,¹ is terminated, said license is hereby suspended for a period of five years.


6. Respondents John N. Caudill, Jr., and John N. Caudill, III, were officers and/or agents of respondent Walker Brothers Circus, Inc., and were responsible for or participated in the violations upon which Walker Brother Circus, Inc.'s license suspension is based, and will not be licensed within the period during which the order of suspension is in effect, in accordance with section 2.9 of the Regulations (9 C.F.R. § 2.9).


¹See *In re John Walker d/b/a Walker Brother's Circus*, 56 Agric. Dec. 30 (1997).


The provisions of this order shall become effective on March 30, 2004. Copies of this decision shall be served upon the parties.


WALKER BROTHERS CIRCUS, INC.


John N. Caudill, Jr.
Respondent


John N. Caudill, III
Respondent


Bernadette R. Juarez
Attorney for Complainant


B
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Done at Washington, D.C.
this 29th day of March, 2004


Marc Hillson
Administrative Law Judge